In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1384

WILLIAM A. BAGLEY, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT

Petitioner, a consulting engineer, maintained his office at his home in Milford, New Hampshire. During the taxable years 1960 and 1961, his work required him on many days to travel to towns located between 30 and 75 miles from his home. Typically, he left home at about 6:00 a.m. and returned at 10:00 p.m., eating three meals while traveling (Pet. 7-8).

Petitioner claimed as income tax deductions the meal expenses he incurred while on these daily trips.

Respondent disallowed the deductions on the ground that the outlays did not constitute "Traveling expenses (including the entire amount expended for meals and lodging) while away from home" within the meaning of Section 162(a)(2) of the Internal Revenue Code of 1954. This ruling was in accord with the Commissioner's long-standing position that a taxpayer does not incur a traveling expense "away from home" unless his trip is of such duration that he must be away from home overnight, or, alternatively, that he must pause for sleep or rest. The Tax Court held, however, that the disputed meal expenses were deductible. The court of appeals reversed, approving the position of the respondent (Pet. 7-15).

The issue here is also presented in *United States* v. *Correll*, 369 F. 2d 87 (C.A. 6), in which the court of appeals rejected the position of respondent and allowed deductions for meal expenses. The United States filed a petition for a writ of certiorari in *Correll* on April 28, 1967 (No. 1334, October Term, 1966). The Court of Appeals for the Eighth Circuit has also rejected the Commissioner's interpretation of the statute in two opinions which the Sixth Circuit followed in *Correll*. See *Hanson* v. *Commissioner*, 298 F. 2d 391; *United States* v. *Morelan*, 356 F. 2d 199, 208-210. On the other hand, the Fifth Circuit in *Williams* v. *Patterson*, 286 F. 2d 333, approved the "sleep-or-rest" formulation of the "overnight" rule (see Pet. 8-9, n.4).

A square conflict of circuit court decisions is presented. Accordingly, respondent has no objection to the granting of the petition for a writ of certiorari in the instant case.

Respectfully submitted.

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JUNE 1967.

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